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ATTORNEYS FOR PLAINTIFF ANDREA
REYES

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

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12 ANDREA REYES, Case No.
13 Plaintiff,
14 v.
15 UNITED STATES OF AMERICA [COMPLAINT FOR DAMAGES
(FEDERAL BUREAU OF PRISONS),
16 Defendant.
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18 Plaintiff complains of the defendant United States of America and alleges as
19 follows:

20 **JURISDICTION**

21 1. Subject matter jurisdiction against defendant United States of America,
22 Federal, Bureau of Prisons (“BOP”), exists pursuant to United States Constitution,
23 Article III, Section 2, Subdivision 2, and Title 28 United States Code §§ 1346(b) and
24 2680(h) (the Federal Tort Claims Act).

25 3. Pursuant to the applicable provisions of the Federal Tort Claims Act,
26 within two years of the accrual of the within cause of action and prior to the filing of
27 this complaint, Plaintiff caused a written claim to be presented and lodged with the
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1 BOP setting forth the events and circumstances complained of herein. Said claim
 2 was presented on or about March 15, 2022, and the six month deadline to answer
 3 expired on or about September 15, 2022.

4 **VENUE**

5 4. This is the proper court for the commencement of this action, as
 6 Defendant resides within the jurisdictional boundaries of the Northern District of
 7 California (28 U.S.C. § 1402 (a)(1)). As a second basis for venue, all relevant acts or
 8 omissions occurred within this District (28 U.S.C. § 1402 (b)).

9 **PARTIES**

10 5. Plaintiff Andrea Reyes is and at all relevant times was a natural person
 11 residing in the State of California.

12 6. Defendant United States of America BOP at all relevant times was a
 13 federal executive agency or department as described in detail at Title 18 United
 14 States Code § 4042, *et seq.* At all relevant times herein, plaintiff is informed and
 15 believes that BOP oversaw training, supervision, conduct and activities and safety
 16 measures of agents, employees and officers of the United States BOP. Ross Klinger
 17 (“Klinger”) at all times relevant to the allegations made herein was employed by
 18 Defendant BOP as a federal corrections officer, as described in 18 U.S.C. § 3050, and
 19 was assigned to work at the BOP Federal Correctional Institute Dublin (“FCI
 20 Dublin”). As a correctional officer at FCI Dublin, Klinger had authority to execute
 21 searches of inmates, seize evidence from inmates and arrest inmates for violations of
 22 federal law.

23 **GENERAL ALLEGATIONS**

24 7. FCI Dublin is an all-female low security federal correctional institution
 25 in Dublin, California. This facility is located within the Northern District of
 26 California. The acts and omissions alleged herein all occurred at FCI Dublin.

27 8. During all times relevant to the allegations made herein, the warden, a
 28 chaplain and other correctional officers at FCI Dublin committed, condoned,

1 tolerated, were aware of and permitted the sexual abuse, assault and battery of
 2 female inmates by BOP personnel. This top-down toxic culture of sexual abuse was
 3 well-known by the female inmate population, which left those inmates with the
 4 impression and reasonable belief that they had no choice but to submit to a
 5 correctional officer's sexual advances, abuses and batteries.

6 9. Until approximately October 2020, Klinger was a correctional officer at
 7 FCI Dublin. As a correctional officer, Klinger had physical control, disciplinary
 8 authority over inmates incarcerated at FCI Dublin, and the power to search their
 9 persons, property and cells, the power to seize evidence from them, and the power to
 10 arrest them. In approximately November 2019, he was promoted to the Recycling
 11 Technician position. As the Recycling Technician, Klinger supervised inmates who
 12 participated in the Recycling and Safety Program at FCI Dublin. Klinger was
 13 required to conduct his work and supervise inmates in accordance with BOP policies
 14 and procedures.

15 10. In approximately 2018, Plaintiff was serving her custodial term at FCI
 16 Dublin under the supervision of Klinger and other BOP correctional officers. In or
 17 around 2018, Klinger abused his position of authority and physical control over
 18 Plaintiff by sequestering her from other inmates and making sexual advances toward
 19 her.

20 11. Klinger accessed, or was given access to, Plaintiff's confidential prison,
 21 medical, health, mental and psychiatric records, files and information. Klinger used
 22 the information contained in those records and files to initiate and perpetrate
 23 psychological, emotional and sexual abuse of the Plaintiff, and to otherwise
 24 manipulate her.

25 12. In or around 2019, Plaintiff became part of the recycling crew. As a
 26 member of the crew, one of her duties was to walk around the prison to collect
 27 recycling materials. Klinger was assigned to physically control and supervise

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1 Plaintiff. In and around this time, Klinger began a practice of accompanying Plaintiff
 2 while she cleaned the prison grounds.

3 13. In or around April 2020, Klinger was supervising the recycling crew as
 4 they cleaned the prisons grounds. Klinger used his position of authority to move
 5 Plaintiff away from other inmates or correctional officers, and led her to a warehouse
 6 on facility grounds. Klinger unlocked the warehouse and brought Plaintiff inside.
 7 Once inside, Klinger abused his physical control and authority over Plaintiff by
 8 performing oral sex on her and having sexual intercourse with her. Due to his
 9 authority, power and physical control over her and the well-known tolerance of
 10 sexual abuse of inmates at FCI Dublin, Plaintiff felt and believed that she was
 11 powerless and had no choice but to submit to him.

12 14. On approximately six occasions from April 2020 to October 2020,
 13 Klinger led Plaintiff to the warehouse and sexually assaulted and battered her. All of
 14 these occasions occurred while Klinger was on duty and had disciplinary authority,
 15 power and physical control over Plaintiff.

16 15. At all relevant times, Defendant United States of America, BOP,
 17 foresaw the risk of sexual assaults and battery by on duty correctional officers who
 18 maintain authority and control, and therefore opportunity, over vulnerable inmates
 19 such as Plaintiff. The risks of such conduct are generally foreseeable consequences of
 20 the enterprise and motivated by conditions in Dublin FCI, as evidenced by statutes,
 21 laws, policies and procedures designed to protect vulnerable inmates from sexual
 22 abuse by correctional officers, including, but not limited to, 18 U.S.C. §§ 2241, 2243,
 23 and 2244 and BOP Policy 5324.12.¹

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27 ¹ Sexually Abuse Behavior Prevention and Intervention Program, U.S. Department of Justice, Federal Bureau of
 28 Prisons (June 4, 2015) (https://www.bop.gov/policy/progstat/5324_012.pdf accessed November 29, 2022.)

FIRST CAUSE OF ACTION
[Battery]
[Defendants BOP and DOES 1-50]

Plaintiff complains of Defendant and for a First Cause of Action alleges as follows:

16. Plaintiff hereby refers to, re-alleges and incorporates by this reference as though set forth in full, each and every allegation contained in this complaint.

17. In or around April 2020 to October 2020, Klinger engaged in physically, mentally and sexually abusive conduct toward Plaintiff, including, but not limited to, performing unwelcome and unconsented to sex with Plaintiff.

18. At said time and place, Klinger was employed as a correctional officer
employed by the United States of America, BOP, and was acting in his role as a
correctional officer when he intended to and did cause harmful and offensive sexual
contact with Plaintiff.

14 19. As a proximate result of this conduct, Plaintiff has sustained general,
15 noneconomic damages, including, but not limited to, emotional distress and trauma,
16 anxiety, shame, fear, helplessness, powerlessness, depression and sleeplessness. Said
17 damages are continuing.

18 20. As a proximate result of this conduct, it became necessary for Plaintiff
19 to incur special, economic damages, including expenses for psychiatric care and
20 treatment, and related costs and expenses required in the care and treatment of said
21 injuries, and plaintiff's damage in this respect is presently unascertained as said
22 services are still continuing, and Plaintiff prays leave to insert her elements of
23 damage in this respect when the same are finally determined.

SECOND CAUSE OF ACTION
[Assault]
[Defendants BOP and DOES 1-50]

21. Plaintiff hereby refers to, re-alleges and incorporates by this reference as though set forth in full, each and every allegation contained in this complaint.

22. In or around April 2020 to October 2020, Klinger intended to cause offensive and harmful contact with Plaintiff, including, but not limited to, performing unwelcome and unconsented to sexual acts with Plaintiff while under his physical control and custody as an inmate of FCI Dublin.

23. At said time and place, Klinger was employed as a correctional officer by the United States of America, BOP, and was acting in his role as a correctional officer when he intended to cause harmful and offensive contact with Plaintiff.

24. Klinger's unwelcome and offensive attempts to make sexual contact were a substantial factor in causing Plaintiff's harm.

10 25. As a proximate result of Defendants' intentional conduct, Plaintiff has
11 sustained emotional trauma and distress, including but not limited to fear, shame,
12 helplessness, anxiety, depression and sleeplessness.

13 26. As a proximate result of this conduct, Plaintiff has sustained general,
14 noneconomic damages, including emotional distress and trauma, anxiety, shame,
15 fear, helplessness, powerlessness, depression and sleeplessness. Said damages are
16 continuing.

17 27. As a proximate result of this conduct, it became necessary for Plaintiff
18 to incur special, economic damages, including expenses for psychiatric care and
19 treatment, and related costs and expenses required in the care and treatment of said
20 injuries, and plaintiff's damage in this respect is presently unascertained as said
21 services are still continuing, and Plaintiff prays leave to insert her elements of
22 damage in this respect when the same are finally determined.

PRAYER FOR RELIEF

24 WHEREFORE, Plaintiff pray judgment against Defendant as follows:

- a. For economic (special) damages according to proof;
 - b. For non-economic (general) damages in the amount of \$5,000,000;
 - c. For costs of suit incurred herein; and

1 d. For such other and further relief as the Court may deem proper.

2 Dated: December 6, 2022

WALKUP, MELODIA, KELLY & SCHOENBERGER

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4 By:



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6 MATTHEW D. DAVIS
Attorney for Plaintiff Andrea Reyes

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